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Supreme Court of the United States

OCTOBER TERM, 1956

No. 107

KINGSLEY BOOKS, INC., MARTIN KLEINBERG and LOUIS FINKELSTEIN, doing business as Times Square Book Shop,

and

METROPOLITAN BOOK SHOP, INC., ANNE GOLDBERG, PHILIP PELEGRINO, doing business as Pelley Book Shop, Publishers Outlet and Gordon Law,

Appellants,

against

PETER CAMPBELL BROWN, as Corporation Counsel of the City of New York,

Appellee.

MOTION OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* AND TO ARGUE ORALLY.

LOUIS J. LEFKOWITZ
Attorney General of the State of New York

JAMES O. MOORE, JR.
Solicitor General of the State of New York

RUTH KESSLER TOCH
Assistant Attorney General

Of Counsel

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MOTION OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE* AND TO ARGUE ORALLY.

May It Please The Court:

The undersigned, as Attorney General of the State of New York, respectfully moves this Honorable Court for leave to file a brief in behalf of the position of the appellee in the above cause and to argue orally for a period of about twenty minutes in support thereof.

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
The Capitol
Albany 1, New York

PRELIMINARY STATEMENT.

Under a provision of the statute of New York State which sets forth the duties of the Attorney General of the State, there is placed upon the Attorney General the duty of appearing in support of the constitutionality of a statute of the State, when its constitutionality is brought into question in a litigation (New York Executive Law, § 71).

In practice, the Attorney General of New York State exercises his discretion as to when it is indicated that he should participate in a litigation in which the constitutionality of a statute is attacked, and at what stage of the litigation he should appear.

In this litigation, in which the constitutionality of a statute of the State, designed to control the dissemination of obscene literature, has been challenged, it is the judgment of the Attorney General that the time has come for him to discharge his statutory responsibility in this Court, where the definitive ruling as to the constitutionality of the statute is to be made. This Court noted jurisdiction in the case on January 14, 1957.

ARGUMENT.

POINT I.

Possible significance of determination in this cause upon other New York statutes, and resultant reason for Attorney General to participate in the appeal in this Court.

Within the last three years particularly, a Joint Legislative Committee composed of members of both houses of the State Legislature of New York State, after extensive investigation and study, and finding a widespread and acute

evil in the dissemination in the State, especially among young people, of obscene publications, pictures and other materials, has offered a series of proposed laws designed to stem the distribution and sale of such materials. A number of such bills have become law by adoption by the State Legislature and approval by the Governor. They are listed in an Appendix to this Motion.

One of these laws was the one which, by amendment in 1954 pursuant to recommendation of the Joint Legislative Committee, gave to the Corporation Counsel of the City of New York the legal machinery he employed (New York Code of Criminal Procedure, § 22-a) in the cause before the Court here, to enjoin the sale of written or printed matter found, after trial, to be obscene. (Prior to 1954, this law did not contain the provision permitting a municipality's legal officer to take action thereunder.)

The constitutional attack upon the statute by appellants in the Courts of New York State was based upon the contention that the remedy provided in this statute constituted prior restraint interfering with freedom of speech and the press. The Courts of the State have held that argument to be without merit and the statute to be constitutional and valid (*Brown* v. *Kingsley Books, et al.*, 1 N. Y. 2d 177, affirming, 208 N. Y. Misc. 150 [*sub nom. Burke* v. *Kingsley Books Inc., et al.*]).

While, of course, the particular statute involved in this case would be the only one discussed by the Attorney General orally and in the brief filed by him, his responsibility as to constitutionality of the entire body of New York State laws on the subject is urged as reason that he be heard in the cause, in addition to the Corporation Counsel of New York City whose legal duty in respect to the statute

would not be in the frame of reference to the body of statute laws on the subject as is the Attorney General's. This Court noted jurisdiction in the present case simultaneously (January 14, 1957) with noting jurisdiction in No. 61, *Alberts* v. *California*, and granting certiorari in No. 582, *Roth* v. *United States*, and ordered that the three cases be consolidated for argument. In view of the fact that the Court thus desires to hear these cases, not each in isolation but in relation to each other and to the several statutory provisions involved in them, there is particular reason why the Attorney General of New York State, where a number of statutes on the same subject are in effect in addition to the statute involved in the case, also be heard.

The motion of the Attorney General of the State of New York to file a brief *Amicus Curiae* and argue orally in this appeal should be granted.

Dated: February 14, 1957.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
The Capitol
Albany 1, New York

JAMES O. MOORE, JR.
Solicitor General of the State
of New York

RUTH KESSLER TOCH
Assistant Attorney General
Of Counsel

APPENDIX

Statutes Enacted in New York State in 1954-1956 Dealing With Distribution of Obscene Literature and Articles.

[The description herein of the provisions of the several statutes refers only to their basic provision and omits details. The word "obscene" alone is used here in connection with the statutes. The statutes themselves contain additional terms describing the literature and materials to which they are made applicable]

L. 1954, c. 704—adding Section 1141-b to New York Penal Law. Prohibits "tie-in" sales compelling merchants to handle obscene literature.

L. 1954, c. 702—amending New York Code of Criminal Procedure, § 22-a. This is the section upon which the case at bar is based. The amendment, among other provisions, authorizes the chief legal officer of any city, town or village, to bring actions to enjoin the sale of literature and other articles, found after trial to be obscene.

L. 1955, c. 836—adding Article 49 to New York Penal Law. Makes it a misdemeanor to publish or distribute for resale publications, the title or titles of which contain the words crime, sex, horror or terror.

L. 1955, c. 837—adding to New York Penal Law § 1141(3). Makes possession of six or more identical articles, whose sale is prohibited by Section 1141 of the Penal Law, presumptive evidence of violation of the section.

L. 1956, c. 423—amending New York Penal Law 1141(3). Makes possession of six or more similar articles, whose sale is prohibited by Section 1141 of the Penal Law, presumptive evidence of violation of the section.

L. 1956, c. 598—adding to New York Penal Law § 1141-c. Authorizes seizure by a peace officer of the State, of equipment used in photographing or producing, in the manner described in the section, pornographic, still or motion pictures, and vehicles other than common carriers used in the distribution of obscene articles, and forfeiture thereof.

L. 1956, c. 661—amending New York Penal Law § 1141(1). Adds motion picture projectors to Penal Law prohibition against possession of mechanical contrivances with obscene motion pictures.

L. 1956, c. 662—amending New York Penal Law § 1141(2). Increases the penalties for employing any minor to assist in violating the provisions of Section 1141 prohibiting the distribution of obscene articles.

L. 1956, c. 681—amending New York Penal Law § 1141(1). Makes sale of sadistic and masochistic publications a misdemeanor.

L. 1956, c. 685—amending New York Penal Law § 1144. Permits the District Attorney to deliver seized obscene articles to the F.B.I., State Police or State or Federal investigative committees for investigation, laboratory examination or classification.

L. 1956, c. 599—amending New York Penal Law § 1143. Makes it misdemeanor to mail or transport any advertising material dealing with obscene articles.

L. 1956, c. 886—adding to New York Penal Law § 436-d. Makes it a misdemeanor to sell any publication, other than a rare book, manuscript or educational text, from which the cover or title page or other identification mark has been removed or obliterated.

L. 1956, c. 945—amending New York General Business Law §§ 330, 331. Requires every publication printed or reprinted after September 1, 1956, to have imprinted at one of the places thereof designated in the statute, the name and address of the publisher or printer. (Prior to the 1956 amendment, the statute had, for fifty years, required this information to be printed only in newspapers, magazines and periodicals.)